Supreme Court, U. S.
FILED
JUN 18 1979
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1854

LENNIE B. WARREN and EVERETTE R. WARREN,
Appellants,

VERSUS

SUN OIL COMPANY (Delaware), a Corporation,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

JURISDICTIONAL STATEMENT

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June, 1979

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In the

Supreme Court of the United States

OCTOBER TERM, 1978

No. ———

LENNIE B. WARREN and EVERETTE R. WARREN,
Appellants,

VERSUS

SUN OIL COMPANY (Delaware), a Corporation,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

JURISDICTIONAL STATEMENT

Lennie B. Warren and Everette R. Warren, the Appellants, appeal from the final judgment of the Supreme Court of Oklahoma, dated February 15, 1979, holding that Title 52 Oklahoma Statutes, Section 287.1 *et seq.*, providing for conservation of oil and gas, as applied in this case, are not unconstitutional as being violative of the Appellants' right to substantive due process of law under the Fourteenth Amendment of the Constitution of the United States.

OPINIONS BELOW

The opinion of the Supreme Court of Oklahoma, which appears in the appendix hereto (p. 1-a, *infra*), was issued "not for publication."

JURISDICTION

The judgment of the Court of Appeals of Oklahoma, Division II, bound the Appellants to the terms of a compulsory unitization order issued by the Oklahoma Corporation Commission[1] although the Appellants' mineral interest in an 80-acre tract of land subject to the unitization order was not under lease. A petition for rehearing was entertained and denied on September 21, 1978. A petition for writ of certiorari was filed with the Supreme Court of Oklahoma on October 5, 1978. The writ of certiorari was denied on February 12, 1979 and mandate issued as of February 15, 1979.

A supplementary notice of appeal to this Court was duly filed in the Supreme Court of Oklahoma on March 21, 1979 (See page A-6, *infra*).

This appeal is being docketed in this Court within the 30-day extension of time granted by Mr. Justice White on May 13, 1979 (See page A-7, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

QUESTION PRESENTED

Whether Title 52 O.S. § 287.5 and § 287.13 are violative of the Fourteenth Amendment of the Constitution of the United States when applied to a fee simple mineral owner whose mineral interest is not subject to lease.

---

[1] On January 16, 1974, the Oklahoma Corporation Commission issued an order creating the "Hawley West Unit."

CONSTITUTIONAL PROVISIONS AND RULES

Fourteenth Amendment, United States Constitution:

> "... nor shall any state deprive any person of life, liberty, or property, without due process of law; ..."

---

52 Oklahoma Statutes § 287.5—Ratification or Approval of Plan by Lessees and Owners:

> "No order of the Commission creating a unit and prescribing the plan of unitization applicable thereto shall become effective unless and until the plan of unitization has been signed, or in writing ratified or approved by lessees of record of not less than sixty-three percent (63%) of the unit area affected thereby and by owners of record of not less than sixty-three percent (63%) (exclusive of royalty interests owned by lessees or by subsidiaries of any lessee) of the normal one-eighth (1/8th) royalty interest in and to the unit area, and the Commission has made a finding of either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area. Where the plan of unitization has not been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area at the time the order creating the unit is made, the Commission shall, upon petition and notice, hold such additional and supplemental hearings as may be requested or required to determine if and when the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area and shall, in respect to such hearings, make an entry finding of its determination in such

regard. In the event lessees and royalty owners, or either, owning the required percentage interest in and to the unit area have not so signed, ratified, or approved the plan of unitization within a period of six (6) months from and after the date on which the order creating the unit is made, the order creating the unit shall cease to be in further force and effect and shall be revoked by the Commission."

Section 287.13—Definitions:

"(a) The term 'lessee' refers not only to lessees under oil and gas leases but also to the owners of unleased lands or mineral rights having the right to develop the same for oil and gas. * * *"

RAISING THE FEDERAL QUESTION

The Fourteenth Amendment claim was raised by Appellant before the Court of Appeals of Oklahoma, Division II in their Petition for Rehearing. There the Appellants claimed if 52 O.S. § 287.5 permits the Oklahoma Corporation Commission to "authorize compulsory unitization of landowners property when there is no valid lease, then such statutes are in violation of the Fourteenth Amendment to the Constitution of the United States, and this Court should so hold." The Court denied the motion for rehearing. This claim was reiterated in Appellants' writ of certiorari to the Oklahoma Supreme Court wherein the Appellants stated ". . . that any provision of 52 O.S. § 287.5 . . . that purports to grant authority for the unitization of property not under lease is in violation of the due process law of the Oklahoma Constitution and the Fourteenth Amendment to the Constitution of the United States." Thus

both the Oklahoma Court of Appeals, Division II, and the Oklahoma Supreme Court considered and expressly rejected the Federal Constitutional Claim.

STATEMENT OF THE CASE

Appellant Lennis B. Warren is the owner in fee simple of the surface and the minerals of an 80-acre tract of land in Grant County, Oklahoma. This property was not under an oil and gas lease on January 16, 1974, when the Oklahoma Corporation Commission issued its order creating the Hawley West Unit. Appellants' property was included in the unitized area covering the Mississippi Chat formation which was the common source of supply. Several wells had been drilled in the area covered by the unit with one located on Appellants' property. The well located on Appellants' property was used only for salt water injection; no production come from this well.

The Appellants' mineral interest in the 80-acre tract of land was not subject to any valid leases at the time the Hawley West Unit was created as a result of a successful suit brought by the Appellants to cancel all oil and gas leases on their property for lack of production.

In July 1976, Appellee, as a unit operator, attempted to enter Appellant's property to use the well located thereon as a water injection well and presumably recover oil from the other unit wells not located on Appellant's property. Appellants prevented Appellee from entering Appellants' property and Appellee obtained an ex parte temporary restraining order on July 9, 1976, restraining Appellants' interference.

Thus on July 9, 1976, Appellee, under the protection of the temporary injunction, entered upon the Appellant's land and dug ditches, constructed pipeline, constructed anchors of steel and concrete, made pipeline connections to the well and property of Appellants and began injecting salt water into a dry and abandoned well on Appellants' property.

On July 16, 1976, the Appellants filed an answer to the restraining action filed by Appellees denying that Appellee had a right of entry upon the property involved in this action and challenged the jurisdiction and authority of the Corporation Commission of the State of Oklahoma to include the land involved in this appeal in the order of the Oklahoma Corporation Commission creating the Hawley West Unit. The Appellants' answer also pleaded the Oklahoma Corporation Commission order creating the Hawley West Unit was obtained by fraud. In addition the Appellant's filed a cross-petition against the Appellee for damages resulting from injury to the surface of the land and for removal of equipment belonging to Appellants. The Appellee denied these allegations.

At the July 23, 1976 hearing, the temporary injunction granted Appellee was quashed. Numerous other hearings on motions, etc., were held, including one unsuccessful attempt by Appellee to obtain a writ of prohibition from the Oklahoma Supreme Court.

On May 4, 1977, a pre-trial hearing was conducted where the Appellants provided the trial court with an exhibit stating the value of the property removed from Appellants' property was $15,160.00. The trial court entered

a summary judgment in the case finding the Oklahoma Corporation Commission order creating the Hawley West Unit was valid and Appellants were permanently enjoined from interfering with Appellee and its agents operations. The Appellants were granted $15,160.00 in damages for the equipment removed from the property.

On Appeal the Oklahoma Court of Appeals, Division II, affirmed the judgment of the court below in part remanding for further consideration certain unresolved issues relative to the amount of damages awarded the Appellants. The Court of Criminal Appeals, Division II, and the Oklahoma Supreme Court did not explain why the order of the Oklahoma Corporation Commission creating the Hawley West Unit did not violate the Fourteenth Amendment of the Constitution of the United States although both denied this allegation as grounds for relief.

THE QUESTION IS SUBSTANTIAL

The question of whether a State Corporation Commission can force unitization of mineral interests which are allegedly a part of a common source of supply even though the mineral interests are under no valid lease and even though mineral owners do not wish to participate in the unit is a novel and substantial one. It has never been treated by this Court.

This Court has long recognized that unitization of separately owned tracts within a common source of supply of oil and gas is the acceptable means of accomplishing conservation of oil and gas and that such unitization is a valid exercise of a state's police power. See *Palmer*

Oil Company v. *Amarada Petroleum Corporation*, 343 U.S. 390, 72 S.Ct. 842, 96 L.Ed. 1022 (1952); *Hunter Company* v. *McHugh*, 320 U.S. 222, 64 S.Ct. 19, 88 L.Ed. 5 (1943); *Patterson* v. *Stanolind Oil and Gas Company*, 305 U.S. 376, 59 S.Ct. 259, 83 L.Ed. 231 (1939).

This Court has further recognized that provisions of a State Statute which require that a petition be filed by a designated percentage of interests of lessees and which also require that a proceeding be dismissed upon protest by a cerain percentage of lessees are not an unlawful delegation of legislative authority to private parties. See *Currin* v. *Wallace*, 306 U.S. 1, 59 S.Ct. 379, 83 L.Ed. 441 (1939); *Miller* v. *Schoene*, 276 U.S. 272, 48 S.Ct. 246, 72 L.Ed. 568 (1928).

However, Title 52 Okla. Stat. § 287.13(a) provides that the term "lessee" refers not only to lessees under oil and gas leases but also to the owners of *unleased* lands or mineral rights having the right to develop the same for oil and gas. Thus under the terms of Title 52 O.S. § 287.5 owners of unleased lands are equally subject to compulsory unitization orders issued by the Oklahoma Corporation Commission as are lessees and owners whose interests are subject to leases. This issue has never been brought squarely before this Court before. The Appellants urge that this effect of the Oklahoma Statutes establishing a procedure for unitization of common source of supplies of oil and gas is unconstitutional as it constitutes a taking of property without due process of law.

In *Palmer Oil Company* v. *Amarada Petroleum Corporation* (*supra*), two appeals were filed before this Court

challenging the constitutionality of certain Oklahoma statutes providing for unitized management of common sources of supply of oil and gas. Although this Court held that in light of its previous decisions the Appellants failed to raise any substantial federal questions and dismissed the appeals, the iissue brought before the Court here *was not* present in *Palmer*.

Appellants recognize that mineral owners who have leased their interest in same and lessees of mineral interests come within the purview of the State's police powers and hence are subject to compulsory unitization orders issued by the Oklahoma Corporation Commission.

However, Appellants urge that owners of mineral interests who are neither developing such interests on their own or have leased such interest to others for development have demonstrated *no* predisposition to develop sources of oil and gas and having demonstrated such, therefore have *not* placed themselves in a position to be subject to the State's police powers when such power is exercised for the purpose of conserving oil and gas. Here the Appellants have *no* desire to develop *any* oil and gas which might underlie their property. Thus they view any intrusion upon their land for the purpose of developing any oil and gas which might underlie their property as an unlawful intrusion and an unconstitutional taking of their property.

Appellants conceed that were they to lease the mineral interests to another or develop their mineral interests on their own they would then be subject to the order creating the Hawley West Unit. But Appellants have taken

no such action. Their position is that they wish no development to be undertaken by anyone whether under a lease or as a result of authority granted under the order creating the Hawley West Unit.

Since Appellants do not wish any development of their mineral interests by any party why, then, should Appellants' property not be protected by the Fourteenth Amendment to the Constitution of the United States. If the Statutes providing for compulsory unitization of common sources of supply of oil and gas is predicated solely upon a state's police powers to conserve oil and gas, surely conservation could go no further than the position of Appellants. They wish no development by any party whether by themselves, a lessee or a third party designated under a unitization order.

The absence of any conservation justification adds substantially to the Appellants' Fourteenth Amendment claim.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

STEPHEN JONES
P. O. Box 3339
Enid, Oklahoma 73701

Counsel for Appellants

June, 1979

APPENDIX

NOT FOR PUBLICATION

FILED
COURT OF APPEALS
STATE OF OKLAHOMA
AUG - 1 1978
ROSS N. LILLARD, JR.
CLERK

IN THE COURT OF APPEALS, DIVISION 2
STATE OF OKLAHOMA

Sun Oil Company (Delaware), a corporation, Appellee,	)	
vs.	)	No. 51,027
Lennie B. Warren and Everett R. Warren, Appellants.	)	

APPEAL FROM THE DISTRICT COURT OF
GRANT COUNTY, OKLAHOMA

Honorable J. Russell Swanson, Trial Judge

Action by oil company to enjoin landowners from interfering with oil and gas unit operations. Landowners cross-petitioned for damages to compensate for surface injury and equipment removed. From summary judgment granting injunction and awarding landowners damages, landowners appeal.

AFFIRMED IN PART
AND REMANDED

James R. Cox & E. W. Shaw
Mitchell, DeClerck, Cox, Halstead & Lahman
Enid, Oklahoma — For Appellee

Alfred L. Maxwell
Lamb, Maxwell & Long
Enid, Oklahoma
and
Virgil R. Ball
Watonga, Oklahoma — For Appellans

BACON, J.

This appeal has as its foundation a suit to enjoin surface and partial-mineral owners (appellants) from interfering with the operator (appellee) of an oil and gas unit. Appellants cross-petitioned for damages. The trial court granted the unit operator the request for injunctive relief and awarded certain damages to appellants.

Appellants own the surface and a portion of the minerals of an 80-acre tract of land in Grant County, Oklahoma. The property was under oil and gas lease on January 16, 1974 when the Oklahoma Corporation Commission issued its order creating the Hawley West Unit. Appellants' property was included in the unitized area covering the "Mississippi Chat" formation which was the common source of supply. Appellants later answered interrogatories wherein it was admitted the "Missippi Chat" formation was under appellants' property. Several wells had been drilled in the area covered by the unit with one located on appellants' property.

In January of 1975 appellants filed suit to quiet title to their land and cancel the oil and gas leases on their property for lack of production. Appellants were successful in that suit with all oil and gas leases on appellants' property being canceled.

In July 1976, appellee, as unit operator, attempted to enter appellants' property to use the well located thereon as a water injection well and presumably recover oil from the other unit wells not located on appellants' property. Appellants prevented appellee from entering appellants'

property and appellee obtained an *ex parte* temporary restraining order on July 9, 1976, restraining appellants' interference. Armed with the temporary restraining order and before the hearing date of July 23, 1976, appellee entered appellants' property, dug ditches, laid pipelines, and injected salt water into the well on appellants' property.

On July 16, 1976, appellants answered appellee's petition for a permanent restraining order, denying appellee had any right to enter appellants' property. Appellants' answer pleaded their earlier quiet title suit canceling all oil and gas leases on appellants' property would prohibit appellee's right to enter appellants' property. Appellants' answer also pleaded the Oklahoma Corporation Commission order creating the Hawley West Unit was obtained by fraud. Appellants additionally filed a cross-petition against appellee for damages as the result of injury to the surface and for removal of equipment belonging to appellants. Subsequent answer and replies filed by the parties were in effect denials.

At the July 23, 1976 hearing the temporary injunction granted appellee was quashed. Numerous other hearings on motions, etc., were held, including one unsuccesful attempt by appellee to obtain a writ of prohibition from the Oklahoma Supreme Court.

On May 4, 1977, the case came on for pretrial hearing. At pretrial appellants provided the trial court with an exhibit stating the value of the property removed from appellants' property was $15,160. The trial court then entered summary judgment in the case. The summary judgment resulted in the trial court finding the Oklahoma Corporation Commission order creating the Hawley West Unit was valid and appellants were permanently enjoined from interfering with appellee and its agents' operations. Appellants were granted $15,160 in damages for the equipment removed from their property. The journal entry then states, "That the question of surface damages by defend-

ants (*sic*) from the operation of the unit is reserved by the Court until further order of the Court." Appellants now are challenging the trial court's judgment, arguing under three propositions of error.

Appellants' first proposition reads:

> "Can the District Court at a pretrial conference summarily dispose of questions of fact and render judgment therein?"

As best we can understand it, appellants' argument under this first proposition is that material fact questions exist; therefore, the trial court erred in granting summary judgment. Appellants' argument seems to be that appellants had valid defenses to appellee's petition; therefore, material facts exist, but appellants do not state what the material fact issues are. Thus, an examination of appellants' defenses is necessary.

Appellants' first defense is that appellants successfully quieted their title and all oil and gas leases on *appellants' property* were terminated. This defense overlooks the fact that appellants' property and other properties in the Hawley West Unit were subject to statutory unitization by order of the Oklahoma Corporation Commission, and *no lease on appellants' property was necessary* because of unit production. 52 O.S. 1971 §§ 287.5, 287.9; J. M. Young v. West Edmond Hunton Lime Unit, Okl., 275 P.2d 304 (1954). Therefore, appellants' first "defense" is contrary to law and no material fact issue existed in that regard.

Appellants' second defense is to the effect the Oklahoma Corporation Commission order creating the Hawley West Unit was obtained by fraud. This "defense" must also fail. First, one cannot collaterally attack an order of the Oklahoma Corporation Commission. 52 O.S.1971 § 111; Creslenn Oil Co. v. Corp. Comm'n, Okl., 244 P.2d 315 (1952). Any attack on such an order must be done by direct appeal to the Oklahoma Supreme Court. Town of

Centrahoma v. Carter Oil Co., Okl., 283 P.2d 199 (1955). Second, appellants were parties to and were present at the hearing before the Oklahoma Corporation Commission when the Hawley West Unit was created and appellants did not appeal the order. Third, as aforesaid, appellants admitted in their answers to interrogatories the "Mississippi Chat" formation underlaid their property and the "Mississippi Chat" formation was the common source of Supply of the Hawley West Unit. Under these circumstances this "defense" is also contrary to law and no material fact issue would exist in regard to this defense. These being the only defenses to appellee's petition for injunctive relief we must find the trial court correctly granted summary judgment for injunctive relief. Dist. Ct. Rule 13, 12 O.S.1973 Supp., Ch. 2 App.

Appellants' second proposition reads:

> "Can the District Court at a pretrial conference summarily determine without evidence or testimony, current property values and what has or has not been removed from the appellants' property by the appellee?"

This proposition presents somewhat of a problem because of the pleadings and evidence submitted. The problem results in an attempted piecemeal appeal of damages. The following discussion should make the problem before us apparent.

As we read the law in Oklahoma, appellants' attempt to appeal the "summary judgment" is premature as to the damages claimed in appellants' cross-petition. A partial appeal is not permitted in Oklahoma unless specifically provided for by statute or rule, and a "judgment" is not a final order until all the issues in controversy are resolved. Rule of Civil Appellate Procedure 1.10, 12 O.S. 1974 Supp., Ch. 15 App. 2; Rule of Civil Appellate Procedure 1.11, 12 O.S.1971, Ch. 15 App. 2; 12 O.S.1971 §§ 952,

953; Shaw v Sturgeon, Okl., 304 P.2d 341 (1956); Emerson v. Lewis, Okl., 274 P.2d 529 (1954).

In the present case under the above cited authority, appellants clearly had the right to appeal the granting of the injunction but not to appeal a partial judgment as to damages for removal of appellants' property — a judgment which would leave the issue of surface damages, if any, still in controversy. The obvious reason for these rules is to avoid multiple appeals in a single case.

The judgment as to the granting of injunctive relief is affirmed and the case is remanded to the trial court for final resolution of all issues in controversy as to damages.

Affirmed in part and remanded.

NEPTUNE, P. J., and BRIGHTMIRE, J., concur.

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

LENNIE B. WARREN and EVERETT R. WARREN, Appellants,	)	
vs	)	No. 51,027
SUN OIL COMPANY (Delaware) a corporation, Appellee.	)	

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

NOTICE is hereby given that Lennie B. Warren and Everett R. Warren, the Appellants above named, hereby appeal to the Supreme Court of the United States on the final judgment of the Supreme Court of the State of Oklahoma, affirming the Summary Judgment granting injunction, entered in this action on February 15, 1979.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Respectfully submitted,

s/ Stephen Jones
Stephen Jones
Attorney for Appellants
P.O. Box 3339
Enid, Oklahoma 73701

Dated at Enid, Oklahoma, this 21st day of March, 1979.

This is to certify that a true copy of the foregoing instrument was mailed this date to all counsel of record herein.
s/ Stephen Jones

Supreme Court of the United States

No. A-984

LENNIE B. WARREN AND EVERETT R. WARREN,
Appellants,
v.
SUN OIL COMPANY

ORDER

UPON CONSIDERATION of the application of counsel for the appellants,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including June 14, 1979.

/s/ Byron R. White
Associate Justice of the Supreme
Court of the United States

Dated this 13 day of May, 1979

FILED
COURT OF APPEALS
STATE OF OKLAHOMA
SEP 21 1978
ROSS N. LILLARD, JR.
CLERK

IN THE COURT OF APPEALS, DIVISION 2
STATE OF OKLAHOMA

Wednesday, September 20, 1978

THE CLERK IS DIRECTED TO NOTIFY ALL PARTIES OF THE FOLLOWING ORDERS:

51,027 Sun Oil Company (Delaware), a corporation, Appellee, vs. Lennie B. Warren and Everett R. Warren, Appellants.

Appellants' Petition for Rehearing is denied.

* * * * * * *

s/ Paul Brightmire
PAUL W. BRIGHTMIRE
Acting Presiding Judge

FILED
SUPREME COURT
STATE OF OKLAHOMA
FEB 12 1979
ROSS N. LILLARD, JR.
CLERK

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

Monday, February 12, 1979

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

* * * * * * *

51,027 Sun Oil Co. v. Lennie Warren.
Certiorari denied.

* * * * * * *

s/ Pat Irwin
ACTING CHIEF JUSTICE

Supreme Court, U.S.
FILED
JUL 30 1979
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1978

NO. 78-1854

LENNIE B. WARREN and EVERETT R. WARREN,
Appellants,

VERSUS

SUN OIL COMPANY (Delaware), a corporation,
Appellee

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

MOTION TO DISMISS

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July, 1979

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In

Supreme Court of the United States

October Term, 1978

No. 78-1854

LENNIE B. WARREN and EVERETT R. WARREN,
Appellants,

v.

SUN OIL COMPANY (Delaware), a corporation,
Appellee

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

MOTION TO DISMISS

COMES NOW the Appellee, SUN OIL COMPANY (Delaware), a corporation the duly appointed and acting operator of the Hawley West Unit, and moves the Court to dismiss the present appeal for the following reasons:

A. The appeal is not within the jurisdiction of the United States Supreme Court because it was not taken in conformance with the statues and rules governing such appeals.

B. The question sought to be reviewed by the Appellants was not timely or properly raised or expressly passed on by the Courts of the State of Oklahoma.

STATEMENT OF FACTS

On December 12, 1973, Sun Oil Company, (Delaware), filed an application before the Oklahoma Corporation Commission (hereinafter COMMISSION) for the creation of a unit for the secondary recovery of oil and gas under the Oklahoma Unitized Management of Common Sources of Supply Act (hereinafter referred to as ACT) as set forth in 52 OS 1971, §287.1 through §287.15. The Appellants, as owners of property within the proposed tract, were given notice of the pending application and the hearing scheduled for January 8, 1974. Appellants were represented by counsel at that hearing. On Janury 16, 1974, the COMMISSION approved the application and Unitization Plan and ordered the creation of the Hawley West Unit (hereinafter referred to as UNIT). A copy of the Report, Findings, and Order of the COMMISSION is set forth in the Appendix. Appellants did not appeal that Order.

In July, 1976, the Appellee, as operator of the UNIT, attempted to use a non-producing well located on Appellants' property in furtherance of the UNIT purpose. Appellants refused to permit the UNIT access to the well and Appellee commenced an action in the District Court of Grant County, Oklahoma, requesting injunctive relief from further interference by the Appellants. That case was styled Sun Oil Company (Delaware), a corporation, Plantiff vs. Lennie B. Warren and Everett R. Warren, Defendants, Case No. C-76-30. Judgment granting Appellees a permanent injunction against Appellants was entered in May, 1977. The granting of the injunction was affirmed by the Oklahoma Court of Appeals, Division Two, on August 1, 1978. Subsequent thereto, Appellants retained new counsel. On August 28, 1978, they filed an application for re-hearing before the Oklahoma Court of Appeals, Division Two, wherein they alleged for the first time that certain provisions of the ACT violated the Fourteenth Amendment of the Constitution of the United States. This application for re-hearing and a later Petition for Certiorari to

the Oklahoma Supreme Court were denied without comment by either court.

AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

Appellants request relief by this Court on the claim that 51 OS 1971, §287.5 and §287.13 violate the Fourteenth Amendment of the Constitution of the United States and allege that this appeal is permitted under 28 USC §1257(2). However, the opening paragraph of 28 USC §1257 reads as follows:

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:. . .

The order creating the UNIT is not a decision of the highest court of the State of Oklahoma. The right to appeal orders of the COMMISSION to the Oklahoma Supreme Court is specifically provided by the ACT (see 51 OS 1971, §287.6). Even though Appellants were represented by counsel at the proceedings before the COMMISSION on January 8, 1974, no appeal was taken from the order creating the UNIT. Therefore, the order creating the UNIT, which included the Appeallants' property is not an order within the scope of §1257(2).

In addition, 28 USC §2101(c) provides:

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety (90) days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty (60) days.

More than five (5) years have passed since the creation of the UNIT. Appellants now challenge the inclusion of their property within the UNIT area by this claim of a constitutional defect. The order which

subjected their property to the UNIT operations was made on January 16, 1974, not February 15, 1979 as claimed by the Appellants. Jurisdiction of the court to review the order creating the UNIT ceased February 15, 1974 - thirty (30) days after creation of the UNIT without an appeal being perfected to the Supreme Court of Oklahoma.

Appellants state (pg. 5) that the Oklahoma Court of Appeals, Division Two, and the Oklahoma Supreme Court considered and expressly rejected the federal constitutional claim. Appellee has stated previously that the first claim of a constitutional defect was raised in Appellants' petition for re-hearing before the Oklahoma Court of Appeals, Division Two. No such question was raised before the trial court or in the initial appeal. The Oklahoma Court of Appeals, Division Two, denied the petition for re-hearing without comment and the Oklahoma Supreme Court denied to grant certiorari to the decision of that court, also without comment. Therefore, no reference to or comment was made by either court to the constitutional question. Under Oklahoma appellate procedure, the Supreme Court may not consider constitutional questions raised for the first time in briefs on appeal to that court. Pelican Production Corp. vs. Mize, 573 P. 2s, 703 (OKLA. 1977). See also Birmingham Fire Insurance Company vs. Bond, 301 P. 2d, 361 (OKLA. 1956).

As a final basis for this Motion to Dismiss the Appellee would point out that the constitutionality of the ACT is not a new quesiton before this Court. The ACT has previously been held not to violate the provisions of due process or taking of private property for public use of the Fourteenth Amendment of the Constitution of the United States. Jones Oil Company vs. Corporation Commission of Oklahoma, 382 P. 2d, 751 (OKLA. 1963), ceriorari denied 375 U.S. 931, 84 S. CT. 332, 11 L. Ed. 2d 263. In Cities Service Gas Company vs. Peerless, 340 US 179 (1950) the following statement by the court is found at page 185:

> The due process and equity protection isues raised by Appellant are virtually without substance. It is now undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas. This court has upheld numerous kinds of state legislation designed to curb the waste of natural resources and to protect the correlative rights of owners through ratable taking. . .

Appellants' final argument (pg. 10) that the ultimate in the conservation of oil and gas is not to produce it at all totally ignores the correlative rights of others and the purpose for which the ACT was adopted.

CONCLUSION

Appellees believe that the facts stated herein show that the Appellants have totally failed to present any claim over which this court has jurisdiction to consider further and therefore prays that the appeal be dismissed.

Respectfully submitted,

MITCHELL, DeCLERCK, COX,
HALSTEAD, LAHMAN & SHAW
By: EDWARD A. DeCLERCK
P.O. Box 1029
Enid, OK 73701
COUNSEL FOR APPELLEE

APPENDIX

BEFORE THE COPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: SUN OIL COMPANY (DELAWARE)

FOR AN ORDER CREATING THE HAWLEY WEST UNIT, HAVING FOR ITS PURPSOE THE UNITIZED MANAGEMENT, OPERATION AND FURTHER DEVELOPMENT OF THE MISSISSIPP CHAT, THE COMMON SOURCE OF SUPPLY UNDERLYING ALL OR PORTIONS OF VARIOUS SECTIONS IN TOWNSHIP 27 NORTH, RANGE 8 WEST and TOWNSHIP 26 NORTH, RANGE 8 WEST, GRANT COUNTY, OKLAHOMA	CAUSE CD NO. 38022 ORDER NO. 102582

REPORT OF THE COMMISSION

This cause came on for hearing before Harvey H. Cody, Trial Examiner for the Corporation Commission of the State of Oklahoma, in the Commission's Court Room, Jim Thorpe Building, Oklahoma City, Oklahoma, on the 8th day of January, 1974, at 9:00 a.m., by order of the Commission referring and setting the cause for hearing.

Appearances: George B. Spencer, Attorney, appeared for the Applicant, Sun Oil Company; T.F. Dukes, Attorney, appeared as attorney for Lennie Warren and her husband Everett R. Warren; and Harvey H. Cody, Conservation Attorney, appeared for the Commission.

The Trial Examiner proceeded to hear the cause andhas filed his report recommending that the applicant be granted, which report and recommendation is hereby adopted and the Commission therefore finds as follows:

FINDINGS

1. That this is the application of Sun Oil Company (Delaware) for an order creating the Hawley West Unit, having for its purpose the unitized management, operation and further development of the Mississippi Chat, the common source of supply underlying all or

portions of various sections in Township 27 North, Range 8 West and Township 26 North, Range 8 West, Grant County, Oklahoma.

2. A. That notice of the filing of the application herein and of the time, place and purpose of the hearing was regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter and of the persons interested therein and has jurisdiction to enter the order hereinafter set forth, and no protests have been filed; and the Commission finds that all of the material allegations of the application filed herein are true and are supported by susbstantial evidence.

B.That an amendment (dated 10-1-73) to the Plan of Unitization for the Hawley West Unit was entered into the record of the hearing of this matter as an addition of Article 30, Sections 30.1 and 30.2 to said Plan.

C. That during the course of the hearing of this matter the legal description as set forth in the application and the notice of filings for the proposed unit area was corrected to conform with the Plan of Unitization.

3. That the Unit Area, conforming with the Plan of Unitization, which applicant desires to unitize consists of the following:

Township 27 North, Range 8 West, Grant County, Oklahoma:

Section 21: All
Section 28: All
Section 29: SE¼
Section 31: S½ and NE¼
Section 32: All
Section 33: All
Section 34: All

Township 26 North, Range 8 West, Grant County, Oklahoma:

Section 2: All, **Except:** A cemetery Tract described as beginning at a point 825' West of the NE corner of NE¼ Section 2, thence South 594', then West 495', thence North 594', thence East 495' to the point of beginning; and

EXCEPT: A Tract described as beginning at the SE corner of the SE¼ Section 2, thence due West 150', thence due North 280', thenc e due East 150', thence due South 280' to the point of beginning.

Section 3: All
Section 4: All
Section 5: N½ and SE¼
Section 9: N½
Section 10: N½
Section 11: N½

Plat attached.

that said lands are delineated upon a plat which is attached to the

Plan of Unitization as Exhibit "B", and which said lands are hereinafter referred to as Unit Area. The plat of the area referred to above is adopted and made a part hereof by reference.

4. A The Commission finds that the Unit Area hereinabove described is underlain by and constitutes a common source of supply of oil and gas known as the Mississippi Chat encountered between the depths of 5,262' and 5,316', as found on the electric log for the Champlin Exploration Inc.'s Hickock #1 Well located in the SE¼ SE¼ Section 3-26N-8W, Grant County, Oklahoma, and that said common source of supply of oil and gas known as the Mississipii Chat encountered between the depths of 5,262' and 5,316', as found on the electric log for the Champlin Exploration Inc.'s Hickock #1 Well located in the SE¼ SE¼ Section 3-26N-8W, Grant County, Oklahoma, and that said common source of supply has been defined and determined to be productive of oil and gas by actual drilling operations.

B. That the source of water supply will be the Layton Sand found the approximate depth of 4,600'.

5. That the unitized management, operation and further development of said common source of supply is reasonably necessary in order to effectively carry on pressure maintenance or repressuring operations, cycling operations, waterflooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from said common source of supply; that one or more of said utilized methods of operations as applied to such common source of supply or portions thereof are feasible, will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from said common source of supply than would otherwise be recovered; and that the estimate additional cost of conducting such operations will not exceed the value of the additional oil and gas so recovered.

6. That this proposed unit and the adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas rights within the common source of supply or portion thereof directly affected.

7. That the size and shape of the Unit Area is such as may be reasonably required by the successful and efficient conduct of the unitized method or methods of operation for which the unit is

created, and that such unit and the conduct of unitized operations thereunder will have no material adverse effect upon the remainder of such common source of supply.

8. That the Plan of Unitization, as amended, and as filed herein and presented to the Commission for approval, and which is made a part hereof by reference thereto, is suited to the needs and requirements of the particular unit designed in said plan as the Hawley West Unit; that the terms and provisions of said Plan of Unitization are adequate and are proper to effectuate and accomplish the purposes of the Statues hereinbelow referred to; that said plan contains fair, reasonable and equitable provisions for: (A) The efficient unitized management and control of the further development and operation of the Unit Area for the recovery of oil and gas from the common source of supply affected;(B)The division of interest or formuia for the apportionment and allocation of the unit production among and to the several separately owned tracts within the Unit Area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to produce or, receive in lieu thereof their fair, equitable and reasonable share of the unit production and other benefits thereof; (C) The manner in which the Unit and the further development and operation of the Unit Area shall or may be financed and the basis, terms and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations; (D) The procedure and basis upon which wells, equipment and other properties of the several lessees within the Unit Area are to be taken over and used for unit operations, including the method of arriving at the compensation therefor or of otherwise proportionately equalizing or adjusting the investment of the several lessees in the project as of the effective date of Unit Operations; (E) The creation of an operating committee to have general overall management and control of the Unit and the conduct of its business and affairs and the operations carried on by it, together with the creation or designation of such other subcommittees, boards or officers to function under authority of the operating committee, as may be necessary, proper and convenient in the efficient management of the Unit, defining the powers and duties of all such committees, board or officers, and prescribing their tenure and time and method for their selection; (F) The time when the Plan of Unitization shall become and be effective: (G) The time when the

conditions under which and the method by which the Unit shall or may be dissolved and its affairs wound up.

9. That the application herein and the Plan of Unitization, both as amended, presented for approval conform to and comply with the requirements of Sections 287.1-287.15, both inclusive, Title 52 O.S. 1971, and that said Plan of Unitization has been signed, ratified and approved in writing by lessees of record owning 92% of the Unit Area affected thereby and by owners of record of 78% (exclusive of royalty interest owned by lessees or by subsidiaires of any lessee) of the normal 1/8 royalty interst in and to the Unit Area and the order of the Commission entered in this cause may become effective immediately and the Plan of Unitization shall become effective at the time as provided for in said Plan of Unitization.

10. That Sun Oil Company (Delaware), P.O. Box 2039, Tulsa, Oklahoma 74102, will be the Operator of the Hawley West Unit, as set out herein.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma, as follows:

1. That the Hawley West Unit is hereby created in accordance with the terms, provisions and conditions of the Plan of Unitization as amended, attached to the application, as amended, on file herein.

2. That the Plan of Unitization, as amended, attached to the application, as amended, herein is made a part of this order by reference thereto and is hereby approved; and such Plan of Unitization shall constitute the Plan of Unitization in and for the said Hawley West Unit and the unitized area of said Unit, all to the same extent and with the same force and effect as if copied herein in its entirety.

3. That the Unit Area consists of the Mississippi Chat, common source of supply, shown by the plat attached to the Plan of Unitization as Exhibit "B", and covers and includes the following described land:

Township 27 North, Range 8 West, Grant County, Oklahoma:

Section 21: All
Section 28: All
Section 29: SE¼
Section 31: S½ and NE¼
Section 32: All
Section 33: All
Section 34: All

Township 26 North, Range 8 West, Grant County, Oklahoma:

Section 2: All, **EXCEPT:** A cemetery Tract, described as beginning at a point 825' West of the NE corner of NE¼ Section 2, thence South 594', thence West 495', thence North 594', thence Est 495' to the point of beginning; and

EXCEPT: A tract described as beginning at the SE corner of the SE¼ Section 2, thence due West 150', thence due North 280', thence due East 150', thence due South 280' to the point of beginning.

Section 3: All
Section 4: All
Section 5: N½ and SE¼
Section 9: N½
Section 10: N½
Section 11: N½

4. That the source of water supply will be the Layton Sand found at the approximate depth of 4,600'.

5. That each of the tracts of land located in the Unit Area shall become subject to the terms and provisions of the Plan of Unitization, as amended, and hereby approved and a participant in the Unit production and in the other benefits and burdens of the Unit in accordance with the Tract Participation Percentage set forth in Exhibit "A" in said Plan of Unitization.

6. It is further ordered that this secondary recovery operation shall be operated and the production therefrom calculated in accordance with Rule No. 2-260 of Order No. 83168, as amended by Order Nos. 87829 and 94418, and that said secondary recovery operation shall be operated in such a manner that no damage will be done to the surface or any other oil, gas, or fresh water bearing formation.

7. That the unit and the unit operator shall, from time to time, make such reports to the Commission concerning the operation of the Unit Area, as may be requested by the Commission.

8. That the Commission retains continuing jurisdiction over said Unit for the purpose of amending, modifying and interpreting the terms and provisions of this order and the Plan of Unitization of said Unit.

9. That Sun Oil Company (Delaware), P.O. Box 2039, Tulsa, Oklahoma 74102, will be the operator of the Hawley West Unit.

10. That this order shall become effective immediately and the Plan of Unitization shall become effective at the time provided for in said Plan of Unitization.

DONE AND PERFORMED this 16 day of January, 1974.

CORPORATION COMMISSION OF OKLAHOMA

Charles Nesbitt, Chairman

Rex Privett, Commissioner

Attest:

Ed Overholse:

DISTRIBUTED SEP 4 1979

Supreme Court, U.S.
FILED
SEP 4 1979
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1854

LENNIE B. WARREN and EVERETTE R. WARREN,
Appellants,

VERSUS

SUN OIL COMPANY (Delaware), a corporation,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

APPELLANTS' BRIEF IN OPPOSITION

STEPHEN JONES
P. O. Box 3339
Enid, Oklahoma 73701

Counsel for Appellants

September, 1979

UTTERBACK TYPESETTING CO. — PHONE 235-0030 — 3740 S. HOLLIDAY AVE. — OKLA. CITY, OKLA. 73115

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In the
Supreme Court of the United States

OCTOBER TERM, 1978

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LENNIE B. WARREN and EVERETTE R. WARREN,
Appellants,

VERSUS

SUN OIL COMPANY (Delaware), a corporation,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

APPELLANTS' BRIEF IN OPPOSITION

The Appellee, in its Motion to Dismiss in No. 78-1854, improperly cites this Court's holding in *Cities Service Gas Company* v. *Peerless Oil and Gas Company*, 340 U.S. 179, 95 L.Ed. 190 (1950). That case involved an appellant who was *actively* producing gas from over 150 wells. Certainly the appellant was not opposing production. In fact, it was the appellee, in whose favor the Court ruled, who was arguing trespass and waste rather than the appellant, as is the case here.

This revision of the Court's holding and the relevant facts in *Cities Service*, reflects the Appellee's consistent reluctance to directly address the issue in controversy here.

Appellants stated in their Jurisdictional Statement that they recognize that mineral owners who have leased their mineral interest and lessees of mineral interest do indeed come within the purview of a State's police powers and hence, are subject to compulsory unitization orders.

However Appellants again urge that owners of mineral interests who are neither developing such interests on their own and not leasing such interests to others for development, have demonstrated *no* disposition to develop sources of oil and gas. And having demonstrated such, therefore have *not* placed themselves in a position to be subject to the State's police powers, when such power is exercised for the purpose of *conserving* oil and gas.

The Appellants have no desire to develop any oil and gas which might underlie their property. Thus, they view any intrusion upon their land for the purpose of developing oil and gas which might underlie same as an unlawful intrusion and an unconstitutional taking of property.

The issue then is whether under these circumstances the State Corporation Commission nonetheless has the constitutional authority to develop said oil and gas by their unilateral action, all under the guise of "conservation." Appellee's Motion to Dismiss does not discuss this issue. However the Appellee has failed to address the question presented to this Court in this appeal.

Appellee's contention that the constitutional issues were not properly brought before the highest Oklahoma court is likewise without merit. The Appellants have already shown this Court that the constitutional question

was properly raised. In their Petition for Rehearing before Division 2 of the Oklahoma Court of Appeals, the Appellants claimed that if 52 O.S. § 287.5 permits the Oklahoma Corporation Commission to "authorize compulsory unitization of landowners' property when there is no valid lease, then such statutes are in violation of the Fourteenth Amendment to the Constitution of the United States, and this Court should so hold." In addition, this claim was reiterated in Appellants' Writ of Certiorari to the Oklahoma Supreme Court wherein the Appellants stated, ". . . that any provision of 52 O.S. § 287.5 . . . that purports to grant authority for the unitization of property not under lease is in violation of the due process law of the Oklahoma Constitution and the Fourteenth Amendment to the Constitution of the United States." (See Appendix, p. 8, Appellants' Jurisdictional Statement.)

Clearly the Appellants properly and timely raised in explicit language before the highest court of Oklahoma the substantive federal constitutional question. This is so even though the Court's denying the Petition for Rehearing and the Petition for Certiorari were silent with respect to the constitutional questions. *Herb* v. *Pitcairn,* 324 U.S. 117, 89 L.Ed. 789, 65 S.Ct. 459 (1945); *Whitney* v. *California,* 274 U.S. 357 (1927); and *Cincinnati, P.B.S.&P. Packett Company* v. *Bay,* 200 U.S. 179 (1906). Moreover, this Court has expressly held that when the federal question appears for the first time in a Petition for Rehearing filed with the highest state court, the question is deemed to have been properly raised. *Illinois Central R. Company* v. *Kentucky,* 218 U.S. 551 (1910).

Appellee is well aware that any representation that the constitutional question was not properly presented is wholly unmeritorious. Appellants' interests in the matter before this Court were not protected by legal counsel *nor litigated* until the case which gave rise to this appeal was filed in the District Court of Grant County, Oklahoma.

Appellants did not appeal the order creating the Hawley West Unit because the Commission indicated Appellants' remedy lay within the jurisdiction of the District Courts only. Just prior to the (1974) Corporation Commission Hearing Appellants had filed a lawsuit in the District Court of Grant County which resulted in a court order holding (See Appendix A hereto):

> "The Court finds the issues in the First Cause of Action, as shown in the amended petition are fully sustained in Plaintiff's favor; against each and all the Defendants herein; the Oil Lease, because of non-production, became in inactive status and regular produc- of Oil and Gas ceased in November, 1971; therefore, the Oil and Gas Lease terminated as of December 1, 1971; and, that upon termination and failure to remove the material within a reasonable time, all the personal property and equipment, above and below ground on said Lease and used in the Oil operations, became the property of the land owner, Lennie B. Warren.
>
> "It is the further finding of the Court, that the Owner, Lennie B. Warren, is entitled to a decree, quieting the title to the minerals against each and all the Defendants, namely, Blaik Oil Co., a Corp., Sun Oil Co., a Corp., and Creslenn Oil Co., a Corp., and they should be decreed to have no right, title, or interest in the mineral rights in and under said lands owned and possessed by Lennie B. Warren, Plaintiff herein; all the mineral rights in and under the lands described as follows: The East Half (E/2) of Northwest Quarter (NW/4) of 2-26N-8W, Grant Co., Okla., are confirmed as resting in Lennie B. Warren.

This order was never appealed by Appellee although it resolved *against* them, their assertion in their Application for creation of the Hawley West Unit, that they were the owner of the mineral interest (See Appendix B hereto) to-wit:

> "1. Comes now Sun Oil Company, P. O. Box 2039, Tulsa, Oklahoma 74102, applicant herein, and respectfully alleges and states that it is the *record owner* and operator of valid oil and gas leases covering the below described lands in Grant County, Oklahoma.
>
> 2. A. That this is the application of Sun Oil Company (Delaware) for an order creating the Hawley West Unit, having for its purpose the unitized management, operation and further development of the Mississippi Chat Formation, common source of supply, underlying:
>
> *Township 27 North, Range 8 West, Grant County, Oklahoma:*
>
Section 21:	All	Section 32:	All
Section 28:	All	Section 33:	All
Section 29:	SE¼	Section 34:	All
Section 31:	S½ and NE¼ .		
>
> *Township 26 North, Range 8 West, Grant County, Oklahoma:*
>
Section 2:	*All*	*Section 9:*	*N½*
Section 3:	All	Section 10:	N½
Section 4:	All	Section 11:	N½"
Section 5:	N½ and SE¼		

Appellants' position on this matter is further substantiated by the findings of the Corporation Commission in 1976 when Appellee applied for an order permitting them to "inject" salt water through an abandoned well on Appellants' property. At that hearing the Commission found (See Appendix C hereto):

> "4. The testimony of the Protestants and the response filed by Lennie B. Warren were concerned with the lease and title matters, *over which the Oklahoma Corporation Commission has no jurisdiction.*" (Emphasis supplied)

Thus, it is clear that Appellants' constitutional claim has been pursued and preserved consistently and properly; first through the District Courts, then on appeal to Division 2 of the Oklahoma Courts of Appeal and finally by Petition to the Supreme Court of Oklahoma for a Writ of Certiorari.

In light of the inability of Appellee to address the issue presented to this Honorable Court in the Jurisdictional Statement without distoring the facts or citing irrelevant authority, the need for plenary review of the action is now indisputable.

Respectfully submitted,

STEPHEN JONES
P. O. Box 3339
Enid, Oklahoma 73701

Counsel for Appellants

September, 1979

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 1979, three copies of this Brief in Opposition were mailed, postage prepaid to the following:

Sun Oil Company
P. O. Box 2039
Tulsa, Oklahoma 74102

I further certify that all parties required to be served have been served.

Stephen Jones

APPENDIX A

IN THE DISTRICT COURT OF GRANT COUNTY,
STATE OF OKLAHOMA

LENNIE B. WARREN, and EVERETT R. WARREN, Plaintiffs,	)	
vs.	)	NO. C-74-2
BLAIK OIL CO., a Corp., SUN OIL CO., a Corp., and, CRESLENN OIL CO., a Corp., Defendants.	)	

JOURNAL ENTRY OF JUDGMENT
UPON PRE-TRIAL HEARINGS

This cause comes on for hearing before the District Court of Grant County, Oklahoma, on this 24th day of January, 1975, upon regular assignment for pre-trial and application for Summary Judgments upon the pleadings, and facts as divulged by Interrogatories and Depositions.

The Plaintiff's appeared in person and by and through their Attorney, T. F. Dukes; the Defendant, Blaik Oil Co., a Corp., appeared by and through it's Attorney, Jonathan C. Ihrig, of the Firm of Watts, Looney, Nichols, Johnson & Hayes; and, the Defendant, Sun Oil Co., a Corp., appeared by and through it's Attorney, James R. Cox, of the Firm of Mitchell, DeClerck, Cox & Halstead; the Defendant, Creslenn Oil Co., a Corp., failed to make an appearance.

The Court finds that the Creslenn Oil Co., a Corp., having failed to appear, is in default and all the Plaintiffs Petitions and Motions for Summary Judgment, as against it, are good and are hereby sustained and her right as to all the mineral interest is hereby quieted as against it.

The Court upon consideration of the pleadings and records on file herein, upon statements of Counsel, and upon consideration of admitted facts as shown by the records, and as per stipulations of Counsel thereto, finds that it has jurisdiction of the cause and of the parties and that certain Summary Judgments should be entered forthwith herein.

The Court finds the issues in the First Cause of Action, as shown in the amended petition are fully sustained in Plaintiff's favor; against each and all the Defendants herein; the Oil Lease, because of non-production, became in inactive status and regular production of Oil and Gas ceased in November, 1971; therefore, the Oil and Gas Lease terminated as of December 1, 1971; and, that upon termination and failure to remove the material within a reasonable time, all the personal property and equipment, above and below ground on said Lease and used in the Oil operations, became the property of the land owner, Lennie B. Warren.

It is the further finding of the Court, that the Owner, Lennie B. Warren, is entitled to a decree, quieting the title to the minerals against each and all the Defendants, namely, Blaik Oil Co., a Corp., Sun Oil Co., a Corp., and Creslenn Oil Co., a Corp., and they should be decreed to have no right, title, or interest in the mineral rights in and under said lands owned and possessed by Lennie B. Warren, Plaintiff herein; all the mineral rights in and under the lands described as follows: The East Half (E/2) of Northwest Quarter (NW/4) of 2-26N-8W, Grant Co., Okla., are confirmed as resting in Lennie B. Warren.

The Court further finds that as to the Second Cause of Action, in reference to the accountning, that it is specifically reserved by the Court for further action; and the parties involved are the Plaintiff, Lennie B. Warren and Blaik Oil Co., a Corp., Defendant.

The Court further finds that as to the damages alleged to have occurred to said land, under said Third Cause of Action, the same are determined to have lapsed upon the termination of said Lease on December 1, 1971, and that the claim thereto is lapsed by the pertinent two (2) year Statute of Limitations, as provided by Oklahoma Statutes 1971, Title 12, Section 95, Sub-sec. 3.

THEREFORE, IT IS THE ORDER, JUDGMENT AND DECREE OF THIS COURT, that the Plaintiff, Lennie B. Warren, is hereby awarded Summary Judgment against the Defendant, Creslenn Oil Co., a Corp., for failure to appear and the Plaintiff's rights as to all the mineral interests in and to said land is hereby quieted as against the Defendant, Creslenn Oil Co., a Corp.

IT IS FURTHER THE ORDER, JUDGMENT, AND DECREE OF THIS COURT, that title of Lennie B. Warren to said minerals in and to said property is hereby fully quieted as against each and every Defendant herein, and that said Defendants, Blaik Oil Co., a Corp., Sun Oil Co., a Corp., and Creslenn Oil Co., a Corp., are hereby decreed to have no interest, right, or title to said mineral rights in and under the property described as,

> The East Half (E/2) of the Northwest Quarter (NW/4) of Section Two (2), Township Twenty-six (26) North, Range Eight (8) West, Grant County, Oklahoma.

and that said mining rights and property and title thereto is vested solely in the Plaintiff, Lennie B. Warren; AND, THE COURT FURTHER ORDERS AND DECREES, that as alleged in the First Cause of Action, that said Lease became inactive and non-productive on the date of December 1, 1971, and that upon the date of termination, December 1, 1971, that all the personal property and equipment, above and below ground on said Lease and used in said Oil and Gas Mining operations, became the

sole property and equipment of the land owner, Lennie B. Warren; and, Lennie B. Warren is hereby decreed to be the sole owner thereof, and said Defendants, Blaik Oil Co., a Corp., Sun Oil Co., a Corp., and, Creslenn Oil Co., a Corp., are enjoined from making further claims thereto, and are hereby decreed to have no further right, title, or interest therein.

IT IS FURTHER THE ORDER, JUDGMENT AND DECREE OF THIS COURT, that as to the Second Cause of Action, in reference to accounting, that it is specifically reserved by the Court for further action; and the parties involved are the Plaintiff, Lennie B. Warren, and Blaik Oil Co., a Corp., Defendant.

IT IS FURTHER THE ORDER, JUDGMENT, AND DECREE OF THIS COURT, that under the Third Cause of Action, damages were alleged to have occurred to said land, and the claim for such is hereby decreed to be barred by the Statutes of Limitations (Okla. Stat. 1971, Title 12, Sec. 95, Sub-sec. 3), and that any claim to alleged damages is hereby decreed to have lapsed by pertinent statutes of limitations, since the Lease terminated on December 1, 1971, and the Third Cause is hereby dismissed as to each of the Defendants herein with prejudice.

IT IS FURTHER THE ORDER AND JUDGMENT OF THIS COURT, that no Deposition expenses have been made a part of the Court costs and that the Court Costs have up to this point in the case been and are assessed equally between the Plaintiff herein, Lennie B. Warren, and Defendant, Blaik Oil Co., a Corp.

Dated this 24th day of January, 1975.

(s) J. RUSSELL SWANSON
JUDGE

APPROVED:

(s) JONATHAN C. IHRIG
BLAIK OIL CO., a Corp., Defendant,
By: Jonathan C. Ihrig, It's Attorney.

(s) JAMES R. COX
SUN OIL CO., a Corp., Defendant,
By: James R. Cox, It's Attorney.

(s) T. F. DUKES, Her Attorney.
LENNIE B. WARREN, Plaintiff,
By: T. F. Dukes, Her Attorney.

APPENDIX B

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT: SUN OIL COMPANY (Delaware)		
FOR AN ORDER CREATING THE	)	
HAWLEY WEST UNIT, HAVING FOR	)	
ITS PURPOSE THE UNITIZED MAN-	)	
AGEMENT, OPERATION AND FUR-	)	
THER DEVELOPMENT OF THE MISSIS-	)	CAUSE CD
SIPPI CHAT, THE COMMON SOURCE	)	NO. 38022
OF SUPPLY UNDERLYING ALL OR	)	
PORTIONS OF VARIOUS SECTIONS IN	)	
TOWNSHIP 27 NORTH, RANGE 8 WEST	)	
AND TOWNSHIP 26 NORTH, RANGE	)	
8 WEST GRANT COUNTY, OKLAHOMA.	)	

APPLICATION

TO THE HONORABLE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA:

1. Comes now Sun Oil Company, P. O. Box 2039, Tulsa, Oklahoma 74102, applicant herein, and respectfully alleges and states that it is the record owner and operator of valid oil and gas leases covering the below described lands in Grant County, Oklahoma.

2. A. That this is the application of Sun Oil Company (Delaware) for an order creating the Hawley West Unit, having for its purpose the unitized management, operation and further development of the Mississippi Chat Formation, common source of supply, underlying:

Township 27 North, Range 8 West, Grant County, Oklahoma:

Section 21:	All	Section 32:	All
Section 28:	All	Section 33:	All
Section 29:	SE¼	Section 34:	All
Section 31:	S½ and NE¼		

Township 26 North, Range 8 West, Grant County, Oklahoma:

Section 2:	*All*	*Section 9:*	*N½*
Section 3:	All	Section 10:	N½
Section 4:	All	Section 11:	N½"
Section 5:	N½ and SE¼		

all as shown on a plat of the area attached hereto, and marked Exhibit "A".

B. That the Mississippi Chat Formation underlying this area should be declared a separate common source of supply designated as the Hawley West Unit.

C. That applicant herein has obtained the written approval of more than 63% of all the owners of interest having an interest in the lands underlying the area of the proposed Hawley West Unit.

D. That Sun Oil Company (Delaware), P. O. Box 2039, Tulsa, Oklahoma 74102, be appointed as Unit Operator.

3. LEGAL AUTHORITY: 52 O.S. 1971, Sections 287.1-287.15.

4. That in the interest of conservation, the prevention of waste and the protection of correlative rights this application should be set for hearing, that notice be given as required by law; that after the hearing an order be entered creating the Hawley West Unit having for its purpose the unitized management, operation and further development of the Mississippi Chat Formation; that said formation be declared a separate common source of supply underlying the above described lands in Grant County, Oklahoma; and that Sun Oil Company (Delaware), P. O. Box 2039, Tulsa, Oklahoma 74102, be appointed as Unit Operator.

DATED this 11th day of December, 1973.

[Italics supplied by brief writer]

SUN OIL COMPANY (DELAWARE)

By (s) T. T. JACOBSON
T. T. JACOBSON
Manager, Conservation

P. O. Box 2039
Tulsa, Oklahoma 74102
(918) 583-4300

APPENDIX C

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF SUN OIL COMPANY FOR PERMISSION TO INJECT SALT WATER INTO ITS HAWLEY WEST UNIT WELL NO. 33-1, LOCATED IN THE SE/4 NW/4 OF SECTION 2-TOWNSHIP 26 NORTH, RANGE 8 WEST, GRANT COUNTY, OKLAHOMA	CAUSE P. D. NO.7811 ORDER NO. 122221

REPORT OF THE COMMISSION

This cause came on for hearing before Don B. Edinger, Acting Trial Examiner for the Corporation Commission of the State of Oklahoma, in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, on the 25th day of May, 1976, at 1:30 p.m. by order of the Commission referring and setting the cause for hearing.

Mr. Barth P. Walker, Attorney, appeared for the Applicant, Sun Oil Company; Everett R. Warren and Lennie B. Warren, husband and wife, appeared pro se; Mr. Nathan S. Sherman, Assistant Conservation Attorney, appeared for the Commission.

The Acting Trial Examiner heard the cause and filed his report recommending that the application be granted; time was allowed within which exceptions might be filed to said report and none having been filed, the report and recommendations are hereby adopted and the Commission therefore finds as follows:

FINDINGS

1. This is the application of Sun Oil Company for permission to inject salt water into its Hawley West Unit

Well No. 33-1, located in the SE/4 NW/4 Section 2-Township 26 North-Range 8 West, Grant County, Oklahoma.

2. The Commission has jurisdiction of the subject matter herein and notice has been given in all respects as required by law and the Rules of the Commission.

3. The testimony of the Applicant and the Commission staff indicated that the Hawley West Unit Well No. 33-1 conformed in all respects to Commission requirements for water injection wells in that water will be injected through tubing and packer, the casing will be tested in conformance with Commission Rules and that fresh water zones are protected by cement.

4. The testimony of the Protestants and the response filed by Lennie B. Warren were concerned with the lease and title matters, over which the Oklahoma Corporation Commission has no jurisdiction.

5. In the interest of the protection of surface fresh water and oil and gas producing formations and for the purpose of avoiding pollution, this application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma:

That Sun Oil Company should be and is hereby granted permission to inject salt water into its Hawley West Unit Well No. 33-1 located in the SE/4 NE/4 Section 2-Township 26 North-Range 8 West, Grant County, Oklahoma.

DONE AND PERFORMED this 21 day of June, 1976.

OKLAHOMA CORPORATION COMMISSION

(s) Rex Privett
REX PRIVETT, CHAIRMAN

(s) Hamp Baker
HAMP BAKER, VICE CHAIRMAN

(s) Jan Eric Cartwright
JAN ERIC CARTWRIGHT, COMMISSIONER

ATTEST:

(s) Ed Overholser
ED OVERHOLSER, SECRETARY